LIBRARY
SUPREME COURT, U. S.

FILED
JUN 21 1961
JAMES R. BROWNING, Clerk

No. 109

In the Supreme Court of the United States

OCTOBER TERM, 1961

J. C. THOMAS AND MARTHA THOMAS, PETITIONERS

v.

GEORGE D. PATTERSON, DISTRICT DIRECTOR OF INTERNAL REVENUE

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

BRIEF FOR THE RESPONDENT IN OPPOSITION

ARCHIBALD COX,
Solicitor General,
LOUIS F. OBERDORFER,
Assistant Attorney General,
I. HENRY KUTZ,
NORMAN H. WOLFE,
Attorneys,
Department of Justice, Washington 25, D.C.

INDEX

	Page
Opinions below	1
Jurisdiction	1
Question presented	2
Statutes and regulations involved	2
Statement	2
Argument	5
Conclusion	11
Appendix	12

CITATIONS

Cases:

Commissioner v. *Duberstein*, 363 U.S. 278 8

Rudolph v. *United States*, 189 F. Supp. 2 6

Silverman v. *Commissioner*, 253 F. 2d 849 10

Statutes:

Internal Revenue Code of 1954:

Sec. 62 (26 U.S.C. 62) 2, 6, 12

Sec. 162(a) (26 U.S.C. 162(a)) 2, 6, 9, 10, 13

Sec. 262 (26 U.S.C. 262) 2, 6, 9, 14

Miscellaneous:

Rev. Rul. 55–57 (1955–1 Cum. Bull. 315) 10

Rev. Rul. 56–168 (1956–1 Cum. Bull. 93) 10

Treasury Regulations on Income Taxes (1954 Code):

Sec. 1.162–2 ..... 2, 6, 8, 9, 10, 14

Sec. 1.262–1 ..... 6, 7

598692—61——1

In the Supreme Court of the United States

OCTOBER TERM, 1961

No. 109

J. C. THOMAS AND MARTHA THOMAS, PETITIONERS

v.

GEORGE D. PATTERSON, DISTRICT DIRECTOR OF INTERNAL REVENUE

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

BRIEF FOR THE RESPONDENT IN OPPOSITION

OPINIONS BELOW

The opinion of the district court (R. 128–133; Pet. 21–26) is reported at 189 F. Supp. 230. The opinion of the court of appeals (Pet. 27–51) is reported at 289 F. 2d [illegible], 08.

JURISDICTION

The judgment of the court of appeals was entered on March 16, 1961 (Pet. 52). Taxpayer's petition for rehearing was denied on April 12, 1961 (Pet. 53). The petition for a writ of certiorari was filed on May 22, 1961. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

QUESTION PRESENTED

The taxpayer, an insurance agent, was awarded by his employer an all-expense paid trip, for himself and his wife, to a resort hotel where his employer held a vacation-convention for those of its employees who had satisfied specified performance standards. The question is whether the expenses incurred by the taxpayer, for himself and his wife, for transportation to the resort hotel and for accommodations, meals, and recreation at the hotel were deductible ordinary and necessary business expenses of the taxpayer or were, entirely or partially, non-deductible personal expenses.

STATUTES AND REGULATIONS INVOLVED

Sections 62, 162, and 262 of the Internal Revenue Code of 1954 and Treasury Regulations on Income Taxes (1954 Code), Section 1.162–2, appear in the Appendix, *infra*, pp. 12–16.

STATEMENT

The taxpayer, J. C. Thomas,[1] was employed as a field representative of the Liberty National Life Insurance Company. By meeting certain sales and other performance standards, the taxpayer qualified to attend and bring his wife to the Company's annual Torch Club convention, which in 1956 was held at the Hotel Chamberlin, Old Point Comfort, Fort Monroe, Virginia (R. 129–130; Pet. 28).

The Torch Club was founded in 1931. It is composed each year of outstanding field representatives of

[1] Mr. Thomas and his wife filed a joint return for 1956. Mr. Thomas, however, is referred to as "the taxpayer" in this brief.

the Company who, during the preceding year, have met certain established goals. The Company required those employees who were invited and their wives to attend the annual meeting. Employees who qualified for the convention, but who failed to attend for any reason, did not receive any money or other thing of value from the Company in lieu of such attendance (R. 130, 131; Pet. 28–29).

To attend the meeting at the Hotel Chamberlin, the taxpayer and his wife departed from their home in Birmingham, Alabama, on May 14, 1956, spent two nights en route at a place of public lodging, and arrived at the Hotel Chamberlin on May 16. Their return trip commenced on May 20. They spent one night at a public lodging en route to Birmingham, and reached home on May 21. The taxpayer and his wife traveled in their own automobile. Prior to his departure from Birmingham, the taxpayer received from his employer a check for $168.16, which was spent for transportation, meals, and lodging to and from the Hotel Chamberlin (R. 129; Pet. 28).

The Company paid directly to the Hotel Chamberlin $103.40 for lodging and meals for the taxpayer and his wife at the hotel while attending the meeting. The Company also paid directly to a travel agency the sum of $12.92, representing the expenses of a sightseeing trip to Williamsburg, Virginia, for the taxpayer and his wife. The aggregate expenses totaled $284.48. There is no question in this case as to the reasonableness of the amount of these expenses (R. 129–130, 132; Pet. 28).

Those present at the Torch Club convention were expected to adhere to the scheduled program. The taxpayer and his wife participated in substantially all of the scheduled activities.[2] The taxpayer had no control over the program, the time, or the place of the meeting (R. 130–131, 131–132; Pet. 29).

The schedule of activities at the Torch Club convention was as follows (R. 18–29, 49–52; Plaintiff's Ex. 7; Pet. 29–30):

Wednesday, May 16:
- 1:30 Arrival.
- 1:30–5:00 "Renewing old acquaintances and making new acquaintances."
- 6:30 Company dinner and water show.

Thursday, May 17:
- 7:00–9:30 Breakfast with delegates.
- 10:00 Meeting (2½ hours).
- Afternoon—No planned activity (Taxpayer played golf).
- 8:30 Movie.

Friday, May 18:
- 7:00–8:30 Breakfast with delegates.
- 9:00 Tour of Williamsburg and Jamestown.
- 8:30 Bingo.

Saturday, May 19:
- 7:00–9:30 Breakfast with delegates.
- 10:00 Meeting (2½ hours).
- Afternoon Boat Trip.
- 7:00 President's Banquet and Ball.

---

[2] Taxpayer and his wife did not go to the motion picture scheduled for the evening of May 17, as they had previously seen it. Nor did they stay "the whole time" at the water show held on May 16 (R. 19, 23, 51; Pet. 29).

The taxpayer and his wife failed to report on their joint income tax return for 1956 the $284.48 paid to and for them by the taxpayer's employer in connection with the Torch Club trip. The District Director determined a net tax deficiency of $65.59, which then was paid. In the subsequent suit for refund the district court held that the amounts in issue did not constitute gross income to the taxpayer or, in the alternative, were deductible as ordinary and necessary business expenses (R. 128–129, 132; Pet. 27–28).

The court of appeals (Judge Brown dissenting) reversed, holding that the payments, goods and services received by the taxpayer and his wife were includible in his gross income, that the travel expenses were not deductible by the taxpayer as ordinary and necessary business expenses since the primary purpose of the trip to the Hotel Chamberlin was pleasure rather than business, and that the findings of the district court to the contrary were "clearly erroneous." The taxpayer was allowed only a *pro rata* deduction of his own expenses at the hotel for the amount of time spent at the business meetings. The deductions claimed by the taxpayer's wife were completely denied "since her presence at the business meetings which taxpayer attended had no bona fide business purpose from the viewpoint of the taxpayer" (Pet. 30–37).

ARGUMENT

The decision of the court of appeals that the convention trip was primarily for the pleasure of the taxpayer and his wife, rather than for business,

and therefore is not deductible from his gross income, depends upon the particular facts of this case. Moreover, there are no conflicting decisions[3] and the determination below is clearly correct. Thus, there is no need for further review by this Court.[4]

1. Section 62(2) of the 1954 Code, Appendix, *infra*, p. 12, provides that an employee may deduct from his gross income expenses for travel, meals, and lodging "paid or incurred by the taxpayer in connection with the performance by him of services as an employee." Section 62(2) makes these expenses deductible only insofar as they constitute 'ordinary and necessary expenses paid or incurred during the taxable year in carrying on any trade or business * * *'" under Section 162(a), Appendix, *infra*, p. 13; that is, the expenses must be "reasonable and necessary in the conduct of the taxpayer's business and directly attributable to it * * *." Treasury Regulations on Income Tax (1954 Code), Section 1.162–2, Appendix, *infra*, p. 14. Travel expenses for personal activities are not deductible. Section 262, Appendix, *infra*, p. 14; Treasury Regulations on Income Tax (1954 Code), Section 1.262–1.

---

[3] *Rudolph* v. *United States*, 189 F. Supp. 2 (N.D. Tex.), which was decided in the government's favor and which is now pending before the Fifth Circuit, is the only reported decision involving closely analogous facts.

[4] The taxpayer has not petitioned for review of the determination of the court of appeals that the payments, goods, and services which he and his wife received in connection with the 1956 Torch Club trip were gross income to him. The district court's findings in the taxpayer's favor on this point were reversed by the court of appeals as "clearly erroneous," and in this holding Judge Brown concurred (Pet. 37).

When the travel takes place for both business and personal reasons, the expense of travel to and from the place where the activity takes place is not deductible if the primary purpose of the trip is personal. Expenses incurred at the destination and properly allocable to the taxpayer's trade or business are, however, deductible. Treasury Regulations on Income Tax (1954 Code), Section 1.162–2(b)(1). Similarly, the expenses of a taxpayer in attending a convention or meeting may be deductible if incurred for business purposes but not if the convention is for social, political, or similar purposes. Treasury Regulations on Income Tax (1954 Code), Section 1.162–2(d). Applying these principles, both parties have agreed that the "crucial determination" (Pet. 32) as to deductibility is whether the primary purpose of the trip was business or pleasure.

2. The nature of the trip must be determined from the individual taxpayer's point of view and is not established by the viewpoint of his employer.[5] See

[5] The court of appeals demonstrated that the employer's treatment of payments is not controlling by the following example (Pet. 32–33):

"* * * an employer may find that the efficiency of his salesmen is greatly increased if he gives them a two-week, all-expense-paid vacation trip to Florida as a reward for increasing sales. From the employer's point of view, the amounts he expends in providing the trip may be business expenses deductible by him. But to the recipient, that trip is solely for pleasure. Although 'connected with' his business, the salesman who goes on the Florida jaunt is receiving income, just as if the prize in the sales contest were a bonus, and the amounts expended in going to Florida and spending the two weeks there would be nondeductible personal expenditures."

Commissioner v. *Duberstein*, 363 U.S. 278, 287–288. The court of appeals properly considered the following factors in determining the purpose of the trip (Pet. 33–36):

(a) During the entire convention period of three and one-half days at Old Point Comfort, only five hours, at most, were spent in formal business meetings and the remainder of the taxpayer's time was spent in recreational activities of the type usual on a vacation (R. 18–29, 49–52; Plaintiff's Ex. 7; Pet. 33–34).[6]

(b) The convention was sponsored by the taxpayer's employer and virtually the only participants were taxpayer's co-employees who had attained pre-established performance standards (R. 94; Defendant's Ex. A, pp. 5–7).

(c) The convention was held at a resort hotel. The taxpayer took full advantage of the many recreational opportunities available, and the program had been arranged to permit him to do so (R. 18–29, 49–52; Plaintiff's Ex. 7; Pet. 29–30).[7]

---

[6] Treasury Regulations on Income Tax (1954 Code), Section 1.162-2(b)(2) state (Appendix, *infra*, p. 15): "The amount of time during the period of the trip which is spent on personal activity compared to the amount of time spent on activities directly relating to the taxpayer's trade or business is an important factor in determining whether the trip is primarily personal. * * *"

[7] Among the facilities available to the taxpayer and his fellow-conventioneers were: shuffleboard, horseshoes, ping-pong, billiards, pool, a heated outdoor salt-water swimming pool, a picnic area, and a television theater. In addition, the hotel was situated in "the center of historic Virginia" with numerous spots for sight-seeing enthusiasts (Pet. 35).

(d) The attitude of the Company was that during this convention "business is secondary. The main object is to give our people a good time" (Defendant's Ex. C; Pet. 35). The trip was referred to as a "vacation convention" (Defendant's Ex. N; Pet. 35).

On the basis of these factors, the court of appeals correctly concluded that the convention trip was primarily for the pleasure of the taxpayer and his wife, and that the district court had clearly erred in reaching the conclusion that the trip was for business purposes. Since the taxpayer's trip was for personal purposes, he was not entitled to deduct his travel expenses. Sections 162(a) and 262 of the 1954 Code; Treasury Regulations on Income Tax (1954 Code), Section 1.162–2 (b)(1), (d). He is, however, entitled to deduct his expenses, and those of his wife, at the convention which are properly allocable to the taxpayer's trade or business. Treasury Regulations on Income Tax (1954 Code), Section 1.162–2 (b)(1).

3. In the case of his wife, the taxpayer's expenses at the convention were incurred solely for the purpose of providing her with a vacation at a resort hotel. She looked forward to the trip, was encouraged by her husband's employer to regard it as a vacation, and occupied her time at the hotel in the entertainment usual on a vacation (R. 63; Defendant's Ex. N; Pet. 29–30, 35–36). She was not an employee of her husband or of his employer and performed no business functions at the convention or elsewhere.

Since her presence at the few hours of business meetings had no bona fide business purpose from the viewpoint of the taxpayer (Pet. 37)—as opposed to any benefit her presence may have had from the standpoint of the Company—the deductions claimed for her expenses were denied entirely. Treasury Regulations on Income Tax (1954 Code), Section 1.162–2(c). See *Silverman* v. *Commissioner*, 253 F. 2d 849 (C.A. 8); Rev. Rul. 55–57, 1955–1 Cum. Bull. 315; Rev. Rul. 56–168, 1956–1 Cum. Bull. 93.

4. The court of appeals properly allowed petitioner only a *pro rata* deduction for his expenses at the resort allocable to the five hours he spent in business meetings during the three and one-half days of the convention (Pet. 36). Since the taxpayer's trip was primarily for pleasure rather than business, he was not "away from home in the pursuit of a trade or business" (Pet. 14–15), and he is not entitled to deduct the expense of his pleasure trip as a business expense under Section 162(a)(2). The decision of the court of appeals allows the taxpayer his expenses at the Hotel Chamberlin allocable to the few hours which he devoted to business there in accordance with that section and the applicable Regulations.* Treasury Regulations on Income Tax (1954 Code), Section 1.162–2(b)(1).

---

* This deduction was therefore not contested by the District Director.

CONCLUSION

For the foregoing reasons, we respectfully submit that the petition for a writ of certiorari should be denied.

ARCHIBALD COX,
Solicitor General.
LOUIS F. OBERDORFER,
Assistant Attorney General.
I. HENRY KUTZ,
NORMAN H. WOLFE,
Attorneys.

JUNE 1961.

APPENDIX

Internal Revenue Code of 1954:

SEC. 62. ADJUSTED GROSS INCOME DEFINED.

For purposes of this subtitle, the term "adjusted gross income" means, in the case of an individual, gross income minus the following deductions:

(1) *Trade and Business Deductions.*—The deductions allowed by this chapter (other than by part VII of this subchapter) which are attributable to a trade or business carried on by the taxpayer, if such trade or business does not consist of the performance of services by the taxpayer as an employee.

(2) *Trade and Business Deductions of Employees.*

(A) *Reimbursed expenses.*—The deductions allowed by part VI (sec. 161 and following) which consist of expenses paid or incurred by the taxpayer, in connection with the performance by him of services as an employee, under a reimbursement or other expense allowance arrangement with his employer.

(B) *Expenses for travel away from home.*—The deductions allowed by part VI (sec. 161 and following) which consist of expenses of travel, meals, and lodging while away from home, paid or incurred by the taxpayer in connection with the performance by him of services as an employee.

(C) *Transportation expenses.*—The deductions allowed by part VI (sec. 161 and following) which consist of expenses of transportation paid or incurred by the taxpayer in connection with the performance by him of services as an employee.

(D) *Outside salesmen.*—The deductions allowed by part VI (sec. 161 and following)

which are attributable to a trade or business carried on by the taxpayer, if such trade or business consists of the performance of services by the taxpayer as an employee and if such trade or business is to solicit, away from the employer's place of business, business for the employer.

* * * * *

(26 U.S.C. 62)

SEC. 162. TRADE OR BUSINESS EXPENSES.

(a) *In General.*—There shall be allowed as a deduction all the ordinary and necessary expenses paid or incurred during the taxable year in carrying on any trade or business, including—

(1) a reasonable allowance for salaries or other compensation for personal services actually rendered;

(2) traveling expenses (including the entire amount expended for meals and lodging) while away from home in the pursuit of a trade or business; and

(3) rentals or other payments required to be made as a condition to the continued use or possession, for purposes of the trade or business, of property to which the taxpayer has not taken or is not taking title or in which he has no equity.

* * * * *

(26 U.S.C. 162)

SEC. 262. PERSONAL, LIVING, AND FAMILY EXPENSES.

Except as otherwise expressly provided in this chapter, no deduction shall be allowed for personal, living, or family expenses.

(26 U.S.C. 262)

Treasury Regulations on Income Taxes (1954 Code):

SEC. 1.162-2. *Traveling Expenses.*—(a) Traveling expenses include travel fares, meals

and lodging, and expenses incident to travel such as expenses for sample rooms, telephone and telegraph, public stenographers, etc. Only such traveling expenses as are reasonable and necessary in the conduct of the taxpayer's business and directly attributable to it may be deducted. If the trip is undertaken for other than business purposes, the travel fares and expenses incident to travel are personal expenses and the meals and lodging are living expenses. If the trip is solely on business, the reasonable and necessary traveling expenses, including travel fares, meals and lodging, and expenses incident to travel, are business expenses. For the allowance of traveling expenses as deductions in determining adjusted gross income, see section 62(2)(B) and the regulations thereunder.

(b) (1) If a taxpayer travels to a destination and while at such destination engages in both business and personal activities, traveling expenses to and from such destination are deductible only if the trip is related primarily to the taxpayer's trade or business. If the trip is primarily personal in nature, the traveling expenses to and from the destination are not deductible even though the taxpayer engages in business activities while at such destination. However, expenses while at the destination which are properly allocable to the taxpayer's trade or business are deductible even though the traveling expenses to and from the destination are not deductible.

(2) Whether a trip is related primarily to the taxpayer's trade or business or is primarily personal in nature depends on the facts and circumstances in each case. The amount of time during the period of the trip which is spent on personal activity compared to the amount of time spent on activities directly relating to the taxpayer's trade or business is an important factor in determining whether the

trip is primarily personal. If, for example, a taxpayer spends one week while at a destination on activities which are directly related to his trade or business and subsequently spends an additional five weeks for vacation or other personal activities, the trip will be considered primarily personal in nature in the absence of a clear showing to the contrary.

(c) Where a taxpayer's wife accompanies him on a business trip, expenses attributable to her travel are not deductible unless it can be adequately shown that the wife's presence on the trip has a bona fide business purpose. The wife's performance of some incidental service does not cause her expenses to qualify as deductible business expenses. The same rules apply to any other members of the taxpayer's family who accompany him on such a trip.

(d) Expenses paid or incurred by a taxpayer in attending a convention or other meeting may constitute an ordinary and necessary business expense under section 162 depending upon the facts and circumstances of each case. No distinction will be made between self-employed persons and employees. The fact that an employee uses vacation or leave time or that his attendance at the convention is voluntary will not necessarily prohibit the allowance of the deduction. The allowance of deductions for such expenses will depend upon whether there is a sufficient relationship between the taxpayer's trade or business and his attendance at the convention or other meeting so that he is benefiting or advancing the interests of his trade or business by such attendance. If the convention is for political, social or other purposes unrelated to the taxpayer's trade or business, the expenses are not deductible.

(e) Commuters' fares are not considered as business expenses and are not deductible.

* * * * *

U.S. GOVERNMENT PRINTING OFFICE: 1961